



Colorado  
Legislative  
Council  
Staff

Initiative # 61  
**INITIAL FISCAL  
IMPACT STATEMENT**

**Date:** October 31, 2017

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**LCS TITLE:** CRIMINAL JUSTICE

Fiscal Impact Summary	FY 2018-2019	FY 2019-2020
State Revenue	at least (145.0 million)	at least (145.0 million)
State Expenditures	at least \$1.07 billion	at least \$1.07 billion

**Note:** This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the Blue Book Voter Guide if new information becomes available.

**Summary of Measure**

The measure adds a new section to the general provisions of the Code of Criminal Procedures to apply to all state and local criminal cases. It makes the following changes:

***Victim's rights.*** The first sentencing duty under the code must be restitution to victims by defendants, and victims shall receive treatment without charge.

***Rights of criminal defendants.*** Defendants are not to pay any booking, discovery, trial, custody, treatment, or any other government costs. Colorado citizens charged with non-violent crimes are permitted to sign a surrender letter after booking. On appeal, such citizens may post bail equal to twice the monetary amount of loss. The measure allows a charged individual to be held 6 hours for booking and a court hearing on bail or bond, in person, or by two-way audio or video. All non-indigent defendants may hire the public defender to represent them at \$70 per hour. All photos, DNA samples, fingerprints, and other similar evidence concerning defendants whose cases are dismissed or are found factually innocent are required to be destroyed.

***Court procedure.*** The measure makes a number of changes regarding court procedure and trials, including procedures for testimony and jury instructions. Additional provisions:

- ▶ require that judges be assigned by lot;
- ▶ require that only local prosecutors file and try criminal charges;
- ▶ abolish grand juries;
- ▶ require that a defendant denied a local jury trial, subpoena power, or use of evidence of innocence have all past, present, and future cases dismissed;
- ▶ prohibit plea and sentence bargains;
- ▶ require prosecutors to use all sources of reliable scientific identity tests and retain this evidence for the life of a convicted felon;
- ▶ require that prosecution prove that the release of a non-violent criminal defendant should be denied, and why their parole or probation should be revoked; and
- ▶ requires release hearings be held every six months, although the measure does not specify whether this provision applies to parole, probation, or both.

***Criminal sentencing.*** The measure requires that non-violent crimes have a fixed maximum term of incarceration, which must not exceed three years per non-violent crime plus one year for each \$50,000 in theft. On a third conviction in four years of driving a vehicle while intoxicated (DUI), incarceration shall be at least one year, and no good behavior or other correction programs may limit that length of incarceration. Non-violent offenders who have paid all restitution and fines and commit no further crimes shall have their sentences end one year after release.

***Criminal fines and fees.*** No fine may bear interest. Fines for non-violent crimes may not exceed \$3,000 plus twice the monetary amount of loss.

***Decriminalization of certain offenses.*** The measure specifies that poverty, begging, vagrancy, loitering, adult use of alcohol in public, public drunkenness, runaway juvenile, curfew, and mental illness are not crimes; however, civil detention may apply to the latter four.

***Persons found innocent or who have dismissed charges.*** Under the measure, without condition or state tax liability, the state shall pay all defendants fully exonerated or fully dismissed after 2017, tax free payments of \$2,000 per felony filed, \$500 per misdemeanor filed, \$200 per day of incarceration, \$50 per day of probation and/or parole when not incarcerated, all fines, restitution, or other sentencing costs paid to the government or others, costs and legal fees paid in the first case, plus later exoneration or dismissal costs and legal fees at \$100 per hour, and economic and health loss, bail fees, and all other damages directly related to such cases.

***Rights and duties of criminal offenders.*** Convicted inmates may work 40 hours weekly at \$5 dollars hourly, with \$0.50 per hour credited to their account, with excess wages distributed in order to restitution, child support, legal debts, fines, a new victim relief fund, and inmate accounts. Inmates with a history of mental illness, sexual, alcohol, or drug abuse are required to attend treatment four days weekly; inmates without a history of these ailments may not be tested or treated while in custody. Adults are to retain their civil liberties, can vote, and, in non-violent cases, posses firearms.

Inmates may have visitors for 30 minutes daily. In addition, all released inmates shall receive \$2 per day incarcerated to aid their return to society. State offices in each county with over 100,000 residents must offer no-cost aid, treatment, beds, bathrooms, food, and job and license training for the first 45 days after an inmate is released.

***Miscellaneous provisions.*** The measure also:

- ▶ requires reasonable suspicion of a specific violation of law for each vehicle stop by law enforcement;
- ▶ requires the state legislature and local governments to list all crimes and vote on repealing crimes, reducing periods of custody, the nature of penalties, and the amount of fines, which must apply to all past, present, and future cases of living defendants;
- ▶ prohibits the denial of a license for failure to pay bills;
- ▶ allows prosecutors and judges to be sued at any time for gross intentional and specified misconduct;
- ▶ requires governments to obtain liability insurance to pay all such damages and costs by current or former government employees;
- ▶ requires that dollar amounts in the measure be adjusted for inflation every four years; and
- ▶ allows a Governor, state court, or prosecutor to find a living defendant factually innocent.

## State Revenue

***Beginning with FY 2018-19, overall, the measure reduces state revenue by at least \$145 million from fee and fine collections.***

The measure, in effect, prohibits and limits the collection of many court fees and interest related to criminal cases and limits the amount of moneys that can be collected in fines. These reductions are estimated at approximately \$145 million per year for the Judicial Department, the majority of which is credited to various state cash funds. Portions of these moneys are distributed to other state programs, local governments and the General Fund. Decreasing state revenue for the Judicial Department is also likely to reduce expenditures in the department by a similar amount.

## State Expenditures

***The measure will result in a net increase in state expenditures of no less than \$1.07 billion.***

Overall, the measure will increase state expenditures as displayed in Table 1 and described in the sections below. The number of jury trials and associated expenses will increase. Courts will have additional workload and trial costs to defend prosecutors against charges of wrongdoing. The Department of Corrections will have both increased and decreased costs. DOC expenses decrease for reduced periods of incarceration, but increase to provide mental health counseling, payment and allocation of wages, to allow 30 minutes of visitation daily for all incarcerated defendants, and, to possibly provide defendants with financial assistance upon release, or to compensate exonerated defendants. The actual source of payments for released inmates or exonerated defendants is unknown. Costs for the Department of Public Safety and other law enforcement agencies increase to maintain certain identity evidence that would otherwise be destroyed. Net of all indeterminate estimates, the measure will increase state expenditures.

**Table 1  
Cost Drivers Impacting State Expenditures Under Initiative #61**

<b>Trial Courts</b>	
<i>Jury Trial</i>	At least \$1.0 Billion
<i>Prosecutorial Immunity</i>	Indeterminate increase
<b>Department of Corrections</b>	
<i>DUI Offenses</i>	Indeterminate increase
<i>Sentences for Non-Violent Crimes</i>	Indeterminate decrease
<i>Incarcerated Offenders</i>	Indeterminate increase
<b>Department of Public Safety</b>	at least \$750,000
<b>Payments to Released Defendants</b>	Indeterminate increase
<b>Payments to Exonerated Defendants</b>	Indeterminate increase or decrease

***Trial courts - increase for jury trials.*** The elimination of plea agreements and the requirement that all trials be decided by a jury will significantly increase state expenditures in the Judicial Department. Under current practice, approximately three percent of cases are decided by a jury trial. Trial courts are currently funded at about \$151.9 million to support this effort. If 100 percent of cases must be tried in court, the number of judicial officers, court staff, building space, juror remittance, and associated costs are all increased significantly. Jury trials will be longer in duration to provide defendants and jurors opportunity to give testimony without objection. The exact amount of the increase in court cannot be estimated but is assumed to be well over \$1.0 billion.

***Trial courts - increase for civil trials related to prosecutorial immunity.*** The measure makes state prosecutors liable for specified conduct. This provision is anticipated to increase the number of civil suits filed against the state, which will increase court workload. This analysis assumes that state prosecutors will comport with the law and that any liability payments are speculative.

***Department of Corrections (DOC).*** The measure impacts the DOC in several ways and will result in both increases and decreases in state General Fund expenditures.

***DUI offenses.*** The measure creates a new sentencing scheme for crimes involving DUI of alcohol or drugs, and requires a fixed one year term of incarceration in a state prison for a third conviction in four years. Current law requires felony DUI offenders to serve 90-180 days in jail if a judge also orders probation. If a work release program is available and part of the offender's sentence, he or she is required to serve 120 days to two years in jail. As of this writing, the exact number of offenders that this measure applies to was not available. Currently, it costs the DOC about \$22,000 per offender, per year for placement in a private prison and about \$38,000 per offender, per year for placement in a state-operated prison.

***Sentences for nonviolent crimes.*** The measure is anticipated to impact sentence lengths for all nonviolent crimes, which is anticipated to, on balance, reduce DOC costs. Because the measure allows the General Assembly to define what is a nonviolent crime, it is not possible to identify which cases will be affected and how the sentences to the DOC will be impacted.

***Incarcerated offenders.*** Expenditures increase to pay inmates according to the measure's wage requirements, and to allocate these payments between inmate accounts and for other specified purposes. The measure also requires that inmates be afforded 30 minutes of visitation per day. This analysis assumes that an increase in correctional officer staff may be required to implement this requirement. The measure requires that offenders with mental and behavioral health needs must be provided treatment four days per week. Given that at least three quarters of DOC offenders have identified mental and behavioral health needs, this provision is anticipated to significantly increase costs within state prisons. As of this writing, the exact increase in costs has not been estimated.

***Department of Public Safety (DPS).*** The measure requires that all identity data of an exonerated defendant be destroyed, increasing cost and workload for the Colorado Bureau of Investigations (CBI) in the DPS. CBI is responsible for conducting and maintaining fingerprint based criminal history background checks, some of which must now be linked to exonerated individuals and destroyed. This effort will likely require coordination between CBI and multiple state agencies and licensing authorities who use CBI to prepare background checks. If 10 percent of citations issued by the Colorado State Patrol (CSP) result in a defendant's exoneration or dismissal, cash fund expenditures to support the additional workload increase by up to \$750,000 annually.

***Payment of released defendants.*** The measure requires that defendants released from the criminal justice system be provided with resources from state offices in each county, including cash, housing, job training, and other community supports for 45 days following release. Current law provides some of these benefits for state inmates, but not in each county and not for persons being released from county or municipal jails. This provision will increase state expenditures by an indeterminate, but likely significant, amount.

***Payments to exonerated defendants.*** Data is still being collected on the number of individuals this provision is likely to affect. Colorado law has a provision to remunerate exonerated persons found factually innocent. Current law requires such persons be paid monetary compensation in the amount of \$70,000 for each year incarcerated, plus an additional \$25,000 for each year he or she served on parole and \$50,000 for each year he or she was incarcerated and awaited execution. Other benefits must also be awarded, such as tuition waivers for state institutions of higher education. Depending on the facts of a particular case, the measure may increase or reduce state expenditures by an indeterminate amount.

### Local Government Impact

Local courts and law enforcement agencies will have increased costs and reduced revenue similar to those described above for the state courts and law enforcement agencies. Some of these impacts include the following:

***District attorneys.*** The measure affects workload and costs for district attorneys who prosecute felony and misdemeanor cases. By prohibiting plea agreements, workload will be reduced in some cases. By requiring jury trials, workload and costs will increase. As of this writing, the exact impact of these provisions have not been estimated but are expected to vary widely by county.

***Denver County Court, municipal courts, and jails.*** Denver County Court and municipal courts for home-rule cities will have reduced revenue as a result of the prohibition from recovering fees from criminal defendants and increased workload and costs to provide jury trials for misdemeanor cases. In addition, the measure prohibits certain local offenses from being penalized criminally, which will reduce revenue and workload, and jail costs. In addition, by requiring certain DUI offenders to be incarcerated in prison, the measure shifts jail costs for those offenders to the state. Expenditures increase in county jails to pay inmates according to the measure's wage requirements, and to allocate these payments between inmate accounts and other specified purposes. The measure also requires that an inmate with mental and behavioral health needs be provided treatment four days per week. As of this writing, it is not known which jails have the capacity to meet this requirement. Accordingly, these impacts have not been estimated.

On average, a criminal case takes about six months to conclude between the time of the charge and arrest, and the final disposition of the case. This bill requires that all cases be decided by a jury, potentially increasing the time necessary to conclude a case. During this longer time period, local jails will have increased costs to maintain defendants in custody.

***Local law enforcement and governments.*** The measure requires that certain evidence be destroyed and in other cases that it be retained. It also requires local governments to review and adjust penalties for all crimes and to carry liability insurance in case of misconduct. The fiscal impact of these provisions is anticipated to vary widely by jurisdiction and has not been estimated.

## Technical Note

The measure requires that adults are to retain their civil liberties, can vote, and, in non-violent cases, possess firearms, but does not indicate whether these provisions apply during or after incarceration. In addition, the measure requires that crime victims receive treatment at no cost, but does not specify whether the state, local governments, or both are responsible for these costs. This analysis does not include costs or workload associated with either provision.

## Effective Date

If approved by voters, the ballot initiative takes upon proclamation of the Governor within 30 days of the official canvas of votes at the 2018 general election.

## State and Local Government Contacts

All State Agencies	Counties	Municipalities	Special Districts
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